

Western Australia

Reserves (Reserve 43131) Act 2003

As at 12 Jun 2003

No. 32 of 2003

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Western Australia

Reserves (Reserve 43131) Act 2003

No. 32 of 2003

An Act to provide for the care, control and management of Reserve 43131 in the Swan Valley and for related matters.

[Assented to 12 June 2003]

The Parliament of Western Australia enacts as follows:

1. Short title

This Act may be cited as the *Reserves (Reserve 43131) Act 2003*.

2. Commencement

This Act comes into operation on the day on which it receives the Royal Assent.

3. Definitions

In this Act —

“**administrator**” has the meaning given to that term in section 7(1);

“**Authority**” means The Aboriginal Affairs Planning Authority referred to in the *Aboriginal Affairs Planning Authority Act 1972* section 8;

“**LAA**” means *Land Administration Act 1997*;

“**LAA Minister**” has the meaning given to that term in the LAA section 3(1);

“**management order no. I262262**” means the management order by which, under the LAA section 46(1), the care, control and management of the reserve were placed with the Swan Valley Nyungah Community Aboriginal Corporation on 11 October 2002;

“**police officer**” means a person appointed under Part I of the *Police Act 1892* to be a member of the Police Force of Western Australia;

“**the reserve**” means class C reserve no. 43131 comprising 8.8767 ha of Crown land in the Swan Valley that is reserved under the LAA section 41 for the use and benefit of Aboriginal inhabitants.

4. Revocation of management order no. I262262 and effect

- (1) Management order no. I262262 is revoked by force of this Act.
- (2) The revocation, under subsection (1), of management order no. I262262 has effect as if it were a revocation of a management order under the LAA section 50(2).

5. Placing of care, control and management of the reserve and effect

- (1) The care, control and management of the reserve are, by force of this Act, placed with the Authority for the same purpose as that for which the relevant Crown land is reserved and for purposes ancillary or beneficial to that purpose.
- (2) The placing, under subsection (1), of the care, control and management of the reserve has effect as if it were done under the LAA section 46(1).
- (3) The LAA Minister may by order subject the care, control and management of the reserve to such conditions as the LAA Minister specifies and such an order has effect as if it were an order as defined in the LAA section 3(1).
- (4) A reference in the LAA to a management order is, in relation to the reserve during such time as the care, control and management of the reserve remain placed with the Authority (either solely or jointly), a reference to the effect of subsection (1) and any order under subsection (3).
- (5) To avoid doubt, nothing in this Act prevents —
 - (a) the revocation, under the LAA section 50, of the effect of subsection (1); or
 - (b) the taking of any other action under the LAA or any other written law in relation to the reserve, or the care, control and management of the reserve,

without the need for a further Act.

6. Registrar to record certain matters

The Registrar of Titles is to take such measures as are necessary to record the effects of sections 4(1) and 5(1) in the Register as defined in the *Transfer of Land Act 1893*.

7. Additional powers in relation to care, control and management

(1) In this section —

“administrator” means —

- (a) a person engaged under subsection (2)(a); or
- (b) an officer nominated under subsection (2)(b).

(2) The Authority may —

- (a) engage a person under a contract for services; or
- (b) nominate an officer referred to in the *Aboriginal Affairs Planning Authority Act 1972* section 15(1),

to enable the Authority to perform effectively its functions in relation to the reserve.

(3) The administrator may —

- (a) direct a person not to enter the reserve during a period of time specified in the direction or until such time as the direction is revoked;
- (b) direct a person to leave the reserve;
- (c) with such assistants as the administrator thinks are necessary —
 - (i) prevent a person from entering the reserve contrary to a direction under paragraph (a);
 - (ii) remove a person from the reserve if the person does not comply with a direction under paragraph (a) or (b).

(4) A direction under subsection (3)(a) or (b) may be oral or in writing and must be given to the person who is the subject of the direction before the exercise of a power under subsection (3)(c) or (7).

(5) The LAA Minister, in an order under the LAA section 46(1) by which the care, control and management of the reserve is placed with a person other than the Authority, may authorise a person,

or the holder of an office, specified in the order, to exercise any power set out in subsection (3).

- (6) If —
- (a) there is no administrator and a person has not been authorised under subsection (5); or
 - (b) the land that is the subject of the reserve at the commencement of this Act is no longer a reserve as defined in the LAA section 3(1),

the LAA Minister may exercise, in relation to the land, any power set out in subsection (3).

- (7) A police officer may —
- (a) prevent a person from entering the reserve contrary to a direction under subsection (3)(a);
 - (b) remove a person from the reserve if the person does not comply with a direction under subsection (3)(a) or (b).
- (8) The powers that a person may exercise under this section are in addition to, and do not derogate from, the powers that the person has under any other law.
- (9) A person who may exercise a power under subsection (3)(c) or (7) may use such reasonable force as is necessary for the purpose of exercising the power.
- (10) A power may be exercised under this section in relation to the land that is the subject of the reserve even though a person has a legal or equitable right or interest in the land and whether or not the land is a reserve as defined in the LAA section 3(1) at any particular time.

8. Exclusion of rules of natural justice

The rules known as the rules of natural justice (including any duty of procedural fairness) do not apply to or in relation to a direction under section 7(3)(a) or (b).

9. Nature of discretion

- (1) A discretion that a person has for the purposes of section 7(3) is absolute and the person is not required to give reasons for how the discretion is exercised.
- (2) A person is not entitled, because of anything in this Act or anything done by another person, to expect that a discretion referred to in subsection (1) will be exercised in a particular way.

10. Reasons

A person who gives a direction under section 7(3)(a) or (b) is not required to give reasons in relation to the direction, but if the person thinks that it would be in the public interest to disclose any or all of the reasons, the person may do so.

11. Immunity from judicial supervision

No writ of certiorari, mandamus, or prohibition, or other prerogative writ, is to issue and no declaratory judgment or injunction is to be given or granted, in respect of —

- (a) any decision made or purporting to be made under section 7; or
- (b) anything else done or purporting to have been done under section 7.

12. Protection from liability

- (1) An action in tort does not lie against a person for anything that the person has done, in good faith in the performance or purported performance of a function under this Act.
- (2) The Crown is also relieved of any liability that it might otherwise have had for another person having done anything as described in subsection (1).

- (3) The protection given by this section applies even though the thing done as described in subsection (1) may have been capable of being done whether or not this Act had been enacted.
- (4) In this section, a reference to the doing of anything includes a reference to the omission to do anything.

13. Expiry of Act

This Act expires on the second anniversary of the day on which it comes into operation.

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